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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 27 2006

SRC 05 134 51632

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a private university that seeks to employ the beneficiary as an assistant women's soccer coach and assistant director of residence life. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

On the Form I-140 petition, the petitioner lists the beneficiary's job title as "Assistant Women's Soccer Coach/Professor." Form ETA-750, Statement of Qualifications of Alien, identifies the occupation as "Teacher/Coach," but the record does not identify the subject that the beneficiary is said to teach, nor does it indicate that the beneficiary has credentials to teach any academic subject. The most accurate job title appears to be "Assistant Women's Soccer Coach and Assistant Director of Residence Life," which is the title used by the petitioner's director of athletics, [redacted] in a letter accompanying the initial submission. Counsel states that the job offer "include[s] the opportunity to teach part-time as a professor," but there is no evidence that the petitioner had done so as of the petition's filing date. [redacted]etter contains no mention of teaching duties, whether as a "professor" or an "instructor."

As to why the beneficiary qualifies for the waiver, counsel offers this argument:

> The soccer industry in the United States is governed by the U.S. Soccer Federation. Throughout its 90 year history it has striven to make soccer preeminent in the United States. For decades soccer has taken a backseat to sports such as baseball and basketball. Within the last 15 years, however, the soccer industries [*sic*] growth and popularity among Americans has increased dramatically especially in Women's soccer. . . .
>
> Only consistent success at the sports [*sic*] highest level can entrench soccer in the mainstream media. Contributing greatly to this success is talented players. These players must have natural ability but talented players must be . . . trained by talented coaches if the United States is to remain preeminent in the soccer industry. This industry receives profits from ticket sales

> and advertising and affects a vast arrays [*sic*] of businesses that flourish due to its presence and continuing success. . . . At the heart of this industry are talented coaches such as [the beneficiary] who recruit and train the players.

The above arguments are general arguments about the economic benefits of soccer and the role of coaches. Because simply being a soccer coach is not grounds for a national interest waiver, the petitioner must distinguish this particular soccer coach from others in the field and show why it is in the national interest for him, specifically, to receive the waiver. Counsel offers the following arguments:

> [The beneficiary's] place of employment is in Saint Leo, Florida, which is a small town in Pasco County with a population of 595 people. There is not an ample workforce to service [the petitioning university] in Saint Leo, Florida in even menial type jobs. [The petitioner] is especially hard pressed to find an individual in all of Florida who has attained the higher level of education that [the beneficiary] has who was a professional soccer player with expertise in goalkeeping. As attested to in the employer's letter and university statistics and awards, [the beneficiary] has contributed greatly to the current success of [the petitioner's] Women's Soccer Team by recruiting and training promising soccer players both here but especially abroad where soccer is king. . . . Because of his international exposure and former, successful soccer playing experience he has helped to solidify [the petitioner's] soccer defense. The average number of goals conceded per game has declined each year significantly since he began assisting the program.

With regard to the unavailability of qualified U.S. workers, the job offer waiver based on national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages. *Matter of New York State Dept. of Transportation* at 218.

There remains the issue of the beneficiary's skills and achievements as a soccer coach. When examining this evidence, one must keep in mind that the improved performance of one university soccer team, relative to the performance of rival university soccer teams in the United States, is certainly in that university's interest, but not inherently in the national interest; it is not in the national interest to ensure the dominance of one university soccer team over other teams in the United States. Thus, the petitioner must do more than simply show that the beneficiary has improved its team's performance.

[redacted], head women's soccer coach at the petitioning university, states that the beneficiary has recruited several athletes who "have helped move the program forward to become a top program in the country. . . . He has successfully brought to [the petitioning university] the best 18 year old student-athlete, in the conference, in the past two years." The conference in question is the Sunshine State Conference, consisting of nine Florida colleges and universities.

[redacted] cites statistics showing that the number of goals conceded per game has dropped from 2.49 in 2002 to 0.74 in 2004, which is said to be "due, in a large part, to [the beneficiary's] work with the goalkeepers and the defense, allowing them to become a much more solid and compact unit." Also provided are statistics

for "goals scored per game," listed as 16 in 2002, 51 in 2003, and 37 in 2004. These are unrealistic numbers in soccer. Additional documents in the record indicate that the figures show the goals per season, not per game. Per game, the petitioner's team scored, on average, 0.87 goals in 2002; 2.48 in 2003; and 2.28 in 2004. Further statistics indicate that, in 2002, the team's record was 3 wins, 13 losses, and 2 ties. In 2003, the petitioner's team won 12 games, lost 6, and tied twice. In 2004, the petitioner's team won 10 games and lost 6, with no tie games. In 2004, two of the petitioner's players were named to the second team in the NSCAA/Adidas All-South Region Team.

On April 29, 2005, the director issued a request for evidence (RFE). The director instructed the petitioner to show how the beneficiary meets the guidelines set forth in *Matter of New York State Dept. of Transportation.* For example, the director asked how the nation as a whole has benefited from the improvement of the petitioner's women's soccer team. The director advised the petitioner: "Failure to submit the information within twelve (12) weeks may result in the denial of your petition."

On July 27, 2005, counsel wrote: "You have requested additional evidence concerning my client's I-140 application as referenced above. Because I have been in trial handling numerous cases several days a week for the past five months, I am respectfully requesting additional time to submit the items that you have requested. Thank you in advance for your patience and consideration." Counsel did not specify how much additional time would be necessary or identify the evidence that the petitioner was trying to obtain.

On August 5, 2005, the director denied the petition, stating:

> Your response . . . consisted of only a letter from the representative requesting additional time. The request will be considered a partial response from you, and will be considered a request for the decision to now be based on the record.
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> In the absence of the requested evidence, the petitioner did not establish a national interest waiver should be granted. The eligibility for the classification was therefore not established.

On appeal, counsel states: "Even though I failed to submit the required evidence in a timely fashion I did respond to the request for additional evidence in a timely fashion and requested additional time and this request was not an unreasonable request considering the amount of time it takes to put together this applications [*sic*] and the amount of evidence that was submitted originally."

With regard to "the amount of time it takes" to gather the required evidence, we note that the evidence submitted on appeal consists of four photocopied pages of general background information that was already in the record as part of the initial submission.

Nevertheless, whether or not the request for an extension was "reasonable" is not the issue. 8 C.F.R. § 103.2(b)(8) states, in pertinent part:

> Request for evidence. If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence.

> . . . Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence. . . . In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted. Within this period the applicant or petitioner may:
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> (i) Submit all the requested initial or additional evidence;
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> (ii) Submit some or none of the requested additional evidence and ask for a decision based on the record; or
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> (iii) Withdraw the application or petition.

The director acted entirely within the above regulatory requirements. Because 8 C.F.R. § 103.2(b)(8) specifically states that "[a]dditional time may not be granted," the director had no discretion to approve any request for an extension, "reasonable" or otherwise.

The above-cited regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in a timely manner, in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.